

Throughout the quarter of a century I have been privileged and had the honor of representing the Commonwealth of Virginia in the Senate, I have conscientiously in each of those years under all of the Presidents I have served with made the effort to work on judicial nominations in a fair and objective way, recognizing the doctrine of checks and balances and the coequal authority of the two branches.

Whether our President was President Carter, President Ronald Reagan, President George Bush, President Clinton, or President George W. Bush, I have been privileged to accord equal weight to the nominations of all Presidents, irrespective of party. I have done so because of my belief that if the concept of equal power sharing and the concept of checks and balances was lost in the judicial confirmation process, then we may ultimately discourage many highly qualified men and women nominees from offering to serve in our judiciary.

Certainly each Senator is entitled to vote for or against a particular nominee for any reason he or she deems important. And it is clear our Framers did not intend the Senate's role in the advice and consent process to be a rubberstamp. No one is suggesting that. Exercise your authority. Exercise your judgment. Do it fairly. Do it consistently with the doctrine of checks and balances inherent in the Constitution.

This much is evident from history. Soon after the Constitution was ratified, the Senate rejected a nomination put forward by our first President, our founding father, George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. Even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

The key differences between the Rutledge nomination of over 200 years ago and the Estrada nomination of today is that Mr. Rutledge received an up-or-down vote. A simple majority controlled. The early Members of our Senate, some of whom participated in the Constitutional Convention, allowed an up-or-down vote on Mr. Rutledge even though they opposed him.

On the other hand, Mr. Estrada has not received a vote and he is being subjected to a filibuster-proof majority for confirmation.

Our Founding Fathers, I say to my colleagues, were not so prudent of the requirement for the 60 votes.

Mr. Estrada is being opposed simply because of his political ideology. In the view of this Senator we ought to accord equal weight to a President's nominees, irrespective of party. I have tried to abide by this principle throughout my 25 years in the U.S. Senate.

For example, in the 106th Congress and the 107th Congress, I was honored to support the nomination of Roger Gregory. Judge Gregory was originally nominated by President Clinton and he was supported by Virginia's former Democratic Governor Doug Wilder.

Regardless of political ideologies, and regardless of which President nominated him, Judge Gregory was highly qualified to sit on the bench. We are fortunate to have him on the United States Court of Appeals for the Fourth Circuit. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

Like Judge Gregory, Miguel Estrada's nomination is also a clear-cut case.

Mr. Estrada has received a unanimous ranking of "well qualified" by the American Bar Association. In my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But, just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went onto serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before federal district courts and federal appeals courts. He has argued 15 cases before the U.S. Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

In closing, Mr. President, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's constitutional responsibility to render "advice and consent" after a fair process of evaluating a President's nominee. After that process is complete, nominees who emerge from the Judiciary Committee ought to be accorded up or down vote.

Should a Senate rule overrule the Constitutional responsibilities of checks and balances? I think it should not.

Thomas Jefferson once remarked on the independence of our three branches of government by stating, "The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other."

I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves:

Is the current filibuster of Miguel Estrada's consistent with our country's last 200 plus years since our Constitution was ratified?

Are we fulfilling our constitutional responsibilities to preserve the doctrine of checks and balances?

In my view, we don't want to set a precedent that alters the inherent responsibilities of checks and balances in the judicial confirmation process.

But, these questions are for each Senator to decide upon.

I for one, though, fear the precedent that would be set if the Senate does not support cloture for Miguel Estrada and I fear what it might mean for the future of our Judiciary, and the future of our Republic.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the scheduled vote this evening on the Frost nomination now occur at 5:45, provided that debate time from 5 p.m. to 5:45 p.m. be equally divided as under the earlier order.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we are now on a piece of legislation known